

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN ROBERTSON,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

No. 1:23-cv-00975 NODJ GSA (PC)

ORDER DISMISSING WITHOUT PREJUDICE THE STATE OF CALIFORNIA AND THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AS DEFENDANTS PER PARTIES' JOINT STIPULATION
(ECF No. 27)

ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT BY **FEBRUARY 22, 2024**

ORDER DIRECTING DEFENDANT TO FILE RESPONSE TO SECOND AMENDED COMPLAINT WITHIN THIRTY DAYS OF PLAINTIFF'S AMENDED FILING

ORDER VACATING JANUARY 23, 2024, INITIAL SCHEDULING CONFERENCE
(ECF No. 18)

ORDER DIRECTING PARTIES TO FILE RESPONSES REGARDING REPRESENTED DEFENDANTS AND PLAINTIFF'S SERVICE OF PROCESS

PARTIES' RESPONSES DUE BY **JANUARY 30, 2024**

1 FANCY MOORE LIPSEY,
2 Plaintiff,
3 v.
4 STATE OF CALIFORNIA, et al.,
5 Defendants.

No. 1:23-cv-00976 NODJ GSA (PC)

ORDER DISMISSING WITHOUT
PREJUDICE THE STATE OF CALIFORNIA
AND THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
AS DEFENDANTS PER PARTIES' JOINT
STIPULATION

(ECF No. 24)

ORDER DIRECTING PLAINTIFF TO FILE
SECOND AMENDED COMPLAINT BY
FEBRUARY 22, 2024

ORDER DIRECTING DEFENDANT TO FILE
RESPONSE TO SECOND AMENDED
COMPLAINT WITHIN THIRTY DAYS OF
PLAINTIFF'S AMENDED FILING

ORDER VACATING JANUARY 23, 2024,
INITIAL SCHEDULING CONFERENCE

(ECF No. 16)

ORDER DIRECTING PARTIES TO FILE
RESPONSES REGARDING REPRESENTED
DEFENDANTS AND PLAINTIFF'S
SERVICE OF PROCESS

**PARTIES' RESPONSES DUE BY JANUARY
30, 2024**

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19 CRYSTAL GRAHAM,
20 Plaintiff,
21 v.
22 STATE OF CALIFORNIA, et al.,
23 Defendants.

No. 1:23-cv-01323 NODJ GSA (PC)

ORDER DISMISSING WITHOUT
PREJUDICE THE STATE OF CALIFORNIA
AND THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
AS DEFENDANTS PER PARTIES' JOINT
STIPULATION

(ECF No. 17)

ORDER DIRECTING PLAINTIFF TO FILE
FIRST AMENDED COMPLAINT BY
FEBRUARY 22, 2024

ORDER DIRECTING DEFENDANT TO FILE
RESPONSE TO FIRST AMENDED
COMPLAINT WITHIN THIRTY DAYS OF

1 PLAINTIFF'S AMENDED FILING
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4 ORDER VACATING JANUARY 23, 2024,
5 INITIAL SCHEDULING CONFERENCE
6 (ECF No. 8)
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9 ORDER DIRECTING PARTIES TO FILE
10 RESPONSES REGARDING REPRESENTED
11 DEFENDANTS AND PLAINTIFF'S
12 SERVICE OF PROCESS
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15 PARTIES' RESPONSES DUE BY **JANUARY**
16 **30, 2024**
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19 ROXANNE PURDAGONE,
20 Plaintiff,
21 v.
22 STATE OF CALIFORNIA, et al.,
23 Defendants.
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26 No. 1:23-cv-01324 NODJ GSA (PC)
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29 ORDER DISMISSING WITHOUT
30 PREJUDICE THE STATE OF CALIFORNIA
31 AND THE CALIFORNIA DEPARTMENT OF
32 CORRECTIONS AND REHABILITATION
33 AS DEFENDANTS PER PARTIES' JOINT
34 STIPULATION
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37 (ECF No. 14)
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40 ORDER DIRECTING PLAINTIFF TO FILE
41 FIRST AMENDED COMPLAINT BY
42 **FEBRUARY 22, 2024**
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45 ORDER DIRECTING DEFENDANT TO FILE
46 RESPONSE TO FIRST AMENDED
47 COMPLAINT WITHIN THIRTY DAYS OF
48 PLAINTIFF'S AMENDED FILING
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51 ORDER VACATING JANUARY 23, 2024,
52 INITIAL SCHEDULING CONFERENCE
53 (ECF No. 6)
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56 ORDER DIRECTING PARTIES TO FILE
57 RESPONSES REGARDING REPRESENTED
58 DEFENDANTS AND PLAINTIFF'S
59 SERVICE OF PROCESS
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62 PARTIES' RESPONSES DUE BY **JANUARY**
63 **30, 2024**
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1 The above matters have been referred to a United States Magistrate Judge pursuant to 28
2 U.S.C. § 636(b)(1)(B) and Local Rule 302. These matters are currently at the pleading phase of
3 the proceedings.

4 I. JOINT STIPULATIONS

5 In each of the above referenced four cases, the respective Plaintiffs and two of the named
6 Defendants (State of California and the California Department of Corrections and Rehabilitation
7 (“CDCR”)), have signed and filed joint stipulations indicating that they have met and conferred
8 about the allegations and claims in each case. The stipulations agree to the dismissal of
9 Defendants State of California and CDCR. The joint stipulations also agree that the respective
10 Plaintiffs will file amended complaints and that Defendant, Assistant Warden Pallares, will file a
11 response to them. Additionally, the stipulations request the Court to vacate the existing
12 scheduling conferences in each case and to reset them to a date after Defendant Pallares has filed
13 a response to the anticipated amended complaints. In support of their request to vacate the
14 current scheduling conference, the parties assert that because of their agreed upon changes initial
15 disclosures cannot be made, nor can a case schedule be determined and created.

16 II. COURT CONSIDERATIONS

17 A. Representation of Remaining Defendants and Status of Service Upon Defendants

18 1. Representation of Remaining Defendants

19 As a preliminary matter, the Court notes that on June 29, 2023, it issued an order in Stith
20 v. Green, No. 1:23-cv-00947 NODJ GSA (“Stith”), which severed from it multiple Plaintiffs who
21 were listed in the case caption of that action. See Stith, ECF No. 9. By last name, these Plaintiffs
22 are: Stith, Green, Carroll, Robertson, Lipsey, and Hart. See id. As a result, new separate cases
23 were opened for these respective Plaintiffs. For Plaintiffs Robertson and Lipsey they were
24 assigned case numbers 1:23-cv-00975, and 1:23-cv-00976, respectively. In addition, and
25 applicable to this order, in September 2023, two other Plaintiffs, Graham and Purdagone (last
26 names), who were not named plaintiffs in the Stith case, filed separate individual actions, case
27 numbers 1:23-cv-01323 and 1:23-cv-01324, respectively.

1 Currently, in the Robertson, Lipsey, Graham and Purdagone cases, the named defendants
2 are all the same, namely: the State of California, CDCR, Acting Warden Michael Pallares, and
3 Officer Greg Rodriguez. Additionally, in all four cases, the Office of the Attorney General
4 (“OAG”) has only filed notices of appearances on behalf of two of the named defendants: the
5 State of California and CDCR. However, in each of the joint stipulations, in a footnote, the OAG
6 states: (1) that it does not anticipate representing Defendant Greg Rodriguez, and (2) that it will
7 accept service of the respective amended complaints on behalf of Defendant Michael Pallares.

8 The Court can only presume that this means that the OAG will be representing Defendant
9 Pallares in all four matters. However, because no notices of appearance have been filed by the
10 OAG on behalf of Defendant Pallares, the OAG will be ordered herein to: (1) inform the Court
11 whether it will, in fact, be representing Defendant Pallares, and (2) file notices of appearance on
12 behalf of Defendant Pallares if it will be.

13 2. Status of Service on Remaining Defendant

14 The Court also notes that to date, none of the Plaintiffs in the four cases referenced herein
15 have filed proofs of service of summons and complaint for Defendant Rodriguez. Therefore,
16 Plaintiffs will also be ordered to inform the Court whether they wish to dismiss Defendant
17 Rodriguez, or if not, when Plaintiffs anticipate Defendant Rodriguez will be served.

18 B. Joint Stipulation

19 As for the joint stipulations filed in the above referenced cases, the Court anticipates
20 signing them, and by this order will adopt them. The parties are informed, however, that
21 currently these matters have a “NODJ” designation, meaning that a District Judge has yet to be
22 assigned to them. As a result, the Court will not be setting pretrial and trial dates in these actions
23 until either: (1) a District Judge is assigned, or (2) the parties consent to Magistrate Judge
24 jurisdiction.

25 The parties are further informed that because there is currently no District Judge assigned
26 to this case, nor consent to Magistrate Judge jurisdiction, when these cases reach the stage where
27 the issuance of discovery and scheduling orders is appropriate, the Court will initially issue only
28 limited ones that will address matters such as discovery deadlines, dispositive motion deadlines,

1 etc. These orders will issue sua sponte, without a court hearing. The Court will not formally seek
2 input from counsel regarding the dates selected within the orders. Counsel however are welcome
3 to inform the Court in advance of dates they will be unavailable in situations where their
4 appearance will be required.

5 Accordingly, good cause appearing, and consistent with the parties' joint stipulations filed
6 January 16, 2024, in Robertson, No. 1:23-cv-00975 (ECF No. 27); Lipsey, No. 1:23-cv-00976
7 (ECF No. 24); Graham, No. 1:23-cv-1323 (ECF No. 17), and Purdagone, No. 1:23-cv-1324 (ECF
8 No. 14), IT IS HEREBY ORDERED that:

- 9 1. Defendants State of California and California Department of Corrections and
10 Rehabilitation are hereby DISMISSED from the above referenced matters, without prejudice;
- 11 2. Within thirty days from the date of this order – **February 22, 2024**, – Plaintiffs shall
12 file and serve the agreed upon amended complaints;
- 13 3. Defendants' responses to Plaintiffs' amended complaints shall be filed and served
14 within thirty days of Plaintiffs filing their respective amended complaints, and
- 15 4. All scheduling conference currently set in the above referenced cases,¹ are hereby
16 VACATED, and will be reset at a later date.

17 IT IS FURTHER ORDERED that by **January 30, 2024**, – the following shall occur:

- 18 1. The Office of the Attorney General shall:
 - 19 a. Inform the Court whether it will, in fact, be representing Defendant Pallares;
 - 20 b. File appropriate notices of appearance on behalf of Defendant Pallares if it will
21 be representing him;
- 22 2. Plaintiffs shall:
 - 23 a. Inform the Court whether they wish to dismiss Defendant Rodriguez, and if not,
 - 24 b. Inform the Court by which date they anticipate serving Defendant Rodriguez,

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26 ¹ See Robertson, No. 1:23-cv-00975, ECF No. 18 (initial scheduling conference set by Judge
27 Boone for January 23, 2024); Lipsey, No. 1:23-cv-00976 (ECF No. 16) (initial scheduling
28 conference set by Judge Boone for January 23, 2024); Graham, No. 1:23-cv-01323, ECF No. 8
(initial scheduling conference set by Judge McAuliffe for February 27, 2024); Purdagone, No.
1:23-cv-01324, ECF No. 6 (scheduling conference set by Judge Oberto for February 15, 2024).

1 and

2 c. File a proof of service with the Court in each of these cases once Defendant
3 Rodriguez and any DOES have been served.

4 IT IS SO ORDERED.

5 Dated: January 23, 2024

6 /s/ Gary S. Austin
7 UNITED STATES MAGISTRATE JUDGE

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